

**HEARING DATE: May 14, 2013**  
**HEARING TIME: 10:00A.M.**

SHAEV & FLEISCHMAN, LLP  
ATTORNEY FOR DEBTOR  
350 FIFTH AVENUE  
SUITE 7210  
NEW YORK, NY 10118  
646 722-8649

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

CASE NO. 12-12020

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IN RE: Residential Capital, LLC, et al

Debtor.

**NOTICE OF MOTION**

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**PLEASE TAKE NOTICE:** that a Motion will be made before the Honorable Martin Glenn on the 14th day of May, 2013 at 10:00 A.M. at the Southern District Bankruptcy Court located at One Bowling Green, New York, NY 10004 to Terminate the automatic stay in order to proceed with pre-petition claims filed in Bankruptcy Court for the Southern District of New York against GMAC Mortgage, LLC in the Chapter 13 case of Sylvia Dadzie, 11-10822(SHL) and to file an Adversary Proceeding based upon the same pre-petition claims against GMAC Mortgage, LLC, adding Fannie Mae as a Defendant.

**PLEASE TAKE FURTHER NOTICE:** that any response to the Motion must be made and received by counsel for the Debtor with a copy to Chambers on or before May 7, 2013.

DATED: April 8, 2013  
New York, New York

/s/David B. Shaev

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David B. Shaev, Esq.  
SHAEV & FLEISCHMAN, LLP  
Attorney for Debtor  
350 Fifth Avenue, Suite 7210  
New York, New York 10118  
(646) 722-8649

This 8th Day of April, 2013.

/s/ Linda Tirelli

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LINDA TIRELLI, ESQ  
COUNSEL FOR DEBTOR  
Garvey Tirelli & Cushner, Ltd.  
50 Main Street, Suite 390  
White Plains, NY 10606  
Phone: (914)946-2200  
Fax: (914)946-1300

**TO:**

United States Department of Justice  
Office of the United States Trustee  
Southern District of New York  
33 Whitehall Street, 21st Floor  
New York, New York 10004

Gary S. Lee  
Norman S. Rosenbaum  
MORRISON & FOERSTER LLP  
1290 Avenue of the Americas  
New York, New York 10104

Fannie Mae  
3900 Wisconsin Avenue, NW  
Washington, DC 20016-2892  
Attn: Michael J. Williams, CEO

Knuckles, Komosinski & Elliott, LLP  
565 Taxter Road, Suite 590  
Elmsford, NY 10523  
Attn: Kenneth J. Flickinger

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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CASE NO. 12-12020

IN RE: Residential Capital, LLC, et al

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**CHAPTER 13**

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SHAEV & FLEISCHMAN, LLP  
ATTORNEY FOR DEBTORS  
350 FIFTH AVENUE  
SUITE 7210  
NEW YORK, NEW YORK 10118  
TELEPHONE NO. (646) 722-8649  
TELECOPIER NO. (646) 349-7622

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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

	)	<b>CASE NO.: 12-12020</b>
<b>In re:</b>	)	
	)	<b>Chapter 11</b>
<b>Residential Capital, LLC, et al,</b>	)	
	)	<b>Assigned to:</b>
	)	<b>Hon. Martin Glenn</b>
<b>Debtors.</b>	)	<b>Bankruptcy Judge</b>
	)	
	)	

**MOTION FOR RELIEF FROM STAY**

**COME NOW Sylvia Dadzie (hereinafter "Movant"), by and through her undersigned counsel of record, and move to terminate the automatic stay in order to proceed with her pre-petition claims filed in Bankruptcy Court for the Southern District of New York against GMAC Mortgage, LLC ("GMAC") and to file an Adversary Proceeding based upon the same pre-petition claims against GMAC and Fannie Mae In support of her Motion, Movant states:**

1. The Movant commenced this action by the filing of a Chapter 7 Petition on February 25, 2011, Case No:11-10822shl.
2. On May 4, 2011, GMAC Mortgage, LLC ("GMAC") filed a Motion to Lift Stay seeking to foreclose on Debtor's home, located at 3695 Secor Ave., Bronx, New York, a copy of which is annexed hereto as **Exh. "A."**
3. By Order signed June 6, 2011 by the Honorable Allan L. Gropper, the case was converted to a Chapter 13 proceeding and the Court directed that the application of the creditor for Relief of Stay, if moving forward, be re-noticed before the Chapter 13 Judge.
4. On July 22, 2011, Movant's Chapter 13 Plan was filed calling for retention of the home.
5. Schedule D of Movant's petition, as amended, lists GMAC Mortgage as a disputed creditor on this home.
6. Proof of Claim #8, dated August 5, 2011 and filed on August 8, 2011 states that GMAC Mortgage, LLC is the secured creditor on the premises,

a copy of which is annexed heretore as **Exh. "B."** As of the date of this Motion, Proof of Claim # 8 has not been amended.

7. By Notice of Motion dated November 2, 2011, Debtor filed an Objection to Proof of Claim #8. A copy of this Motion together with exhibits is annexed hereto as **Exh. "C."**
8. Debtor filed a Supplemental Objection to Proof of Claim # 8, dated November 14, 2011, alleging overstated escrow charges in said proof of claim as well as other accounting overcharges to Debtor's loan transaction history. A copy of the Supplemental Objection with exhibits is annexed hereto as **Exh. " D."**
9. A Declaration In Opposition and Memorandum of Law In Opposition to Debtor's Objection to Proof of Claim was filed on December 16, 2011. (A copy of the Declaration in Opposition and Memorandum with exhibits is annexed hereto as **Exh. "E."**
10. There has been no response to the Supplemental Objection to Proof of Claim #8 by GMAC or any representative of GMAC.
11. The Objection to Claim and Supplement alleged, in part, that GMAC was not the creditor/ party in interest on Movant's loan, that various versions of a Note has been submitted by GMAC in this case, that there were escrow overcharges, and that an Assignment of Mortgage allegedly prepared after the filing of the bankruptcy petition and just prior to the Motion to Lift Stay, was submitted, and its authenticity and integrity was questioned.
12. Discovery commenced and after more than a year, GMAC finally admitted that Fannie Mae, and not GMAC, was the owner of Debtor's

debt. No witnesses have been provided by GMAC for depositions, despite notices and no Protective Orders have been sought.

13. Movant wishes to file an Adversary Proceeding Complaint substantially in the form annexed hereto as **Exh. "F"** *excluding voluminous exhibits*, adding Fannie Mae as defendant and to proceed to immediately take depositions of various parties, including Fannie Mae.

14. On September 19, 2012, GMAC filed its Notice of Bankruptcy Filing in the State action imposing an automatic stay under Section 362 of the Bankruptcy Code.

15. On September 21, 2012, the Court entered its Order granting "in part" GMAC's Motion to Stay as to "any non permitted claims due to automatic bankruptcy stay."

16. Counsel for GMAC and Movant have been unable to settle the Objection to Claim and to move forward. It is necessary to convert the action to an Adversary Complaint, to add Fannie Mae as a defendant and to conduct depositions which counsel for Movant is prepared to move forward

17. The Movant would suffer harm if not permitted to proceed with her claims, including the fraud claim, and to properly assert defenses to properly litigate GMAC's proof of claim.

18. a) Movant wishes to alert the Court to the fact that the claims set forth in the original Objection to Claim, included allegations concerning the original counsel for GMAC (Stephen J. Baum, P.C.), a questionable Assignment of Mortgage prepared allegedly by or on behalf of GMAC's counsel after the filing of the bankruptcy petition and just prior to the Motion to Lift Stay, two differing versions of endorsements on Notes

annexed to court filings by GMAC, all similar to the facts and allegations set forth in the case *In re Mim*, 438 B.R. 52 (S.D.N.Y. 2010), and in the recent opinion, *In re John Idicular*, 484 B.R. 284 (S.D.N.Y. 2013).

b) Due to this Court's history in litigating similar cases, as well as the underlying Chapter 11 proceedings, it is respectfully suggested that for judicial efficiency and administration of justice, that the Adversary Proceeding, and/or the underlying Chapter 13 case, be re-assigned to the Honorable Martin Glenn.

**WHEREFORE**, the Movant, Sylvia Dadzie, respectfully requests this Court lift the stay to permit Movant to file an Adversary Proceeding substantially in the form annexed hereto, and direct that the Adversary Proceeding be assigned to the Honorable Martin Glenn and for such other and further relief as this Court may deem proper and just.

Dated: April 8, 2013

This 8th Day of April, 2013

/s/Linda Tirelli

**Linda Tirelli, Esq.**  
Garvey Tirelli & Cushner, Ltd.  
50 Main Street, Suite 390  
White Plains, NY 10606  
Phone: (914)946-2200  
Fax: (914)946-1300

This 8th Day of April, 2013

/s/David B. ShaeV

**DAVID B. SHAEV, ESQ.**  
SHAEV & FLEISCHMAN, LLP  
COUNSEL FOR DEBTOR  
350 FIFTH AVENUE, SUITE 7210  
NEW YORK, NY 10118  
PH(646)722-8649